IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.9829 OF 2004

Swami Vivekanand Society & Ors. ...Petitioners.

Vs.

Narayan Namdeo Ghuge. ...Respondent.

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Mr.P.N.Joshi for the Petitioners.

Mr.A.D.Avhad for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

May 4, 2005.

P.C. :

1. Rule, by consent returnable forthwith. Counsel appearing for the Respondent waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The Respondent was working as a Peon in the Swami Vivekanand Vidyalaya at Nasik which is conducted by the First Petitioner. The Respondent

was appointed on 2nd May 1996. The case of the Petitioner is that on 21st July 1998, the Respondent tendered a resignation from service which was accepted. On 16th August 1998, the Respondent sent a notice denying that he had tendered his resignation to which the Petitioner responded on 19th September 1998. The Respondent moved the School Tribunal after a considerable delay on 1st February 2000. In the meantime, a Criminal Complaint was filed against the management before the Judicial Magistrate, First Class, Nasik in which the Judicial Magistrate, First Class by an order dated 17th September 1999 came to the conclusion that there was no prima facie evidence for the issuance of process. It was thereafter, nearly five months later that the Respondent moved the School Tribunal.

3. The Tribunal has been persuaded to accept the case of the Respondent holding that the management had not furnished a specific explanation as to why the procedure prescribed in Section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, had not been followed. The Tribunal was further of the

view that the letter of resignation does not conform with the requirements of Section 7 of the Act and Rule 40. The management, it was held, had not deducted a proportionate amount of pay in lieu of notice.

4. The provisions of Section 7 and Rule 40 have been interpreted in two recent decisions of this Court. The first decision which is in **Barshi Education Society vs. Ashok Ganesh Kulkarni**, 2004(3) Mh.L.J.587, adverts to the provisions of Section 7 of the Act which lay down that if any employee intends to resign from his post in any private school, he shall draw up a letter of resignation in duplicate and sign both the copies of that letter and put the date thereon. He may then forward one copy to the Management by registered post and keep the other copy with him. This Court held, while interpreting the aforesaid provision thus:

> "The requirement that the letter be forwarded by registered post is intended to ensure that the employee is not subjected to the kind of coercion or duress which may operate if any

employee is called in person, required to sign a letter of resignation and hand it over to the management in person. Often times, it is alleged before the court that the management sent for the employee, pressurised the employee to tender a letter of resignation on the spot and then used that to contend that the services of the employee have come to an end. Where an employee has submitted the resignation not by registered post but otherwise, a greater degree of circumspection is required on the part of the tribunal particularly when it is alleged that the resignation was not voluntary. When the question as to whether the resignation was or was not voluntary is raised before the Tribunal, all relevant circumstances must be considered and whether the resignation was or was not delivered by registered post is one of the relevant circumstances. The Tribunal proceeded on the basis that the resignation must necessarily be regarded as invalid when it is not sent by registered post. That in my view, would not be a correct interpretation of Section 7. The legislature

has used the expression that the employee may forward one copy of the resignation to the management by registered post. This provision cannot, in my view, be interpreted to mean that the resignation must be regarded as invalid in every case where it is not sent by registered post. While construing all the circumstances of the case, the Tribunal must undoubtedly have due regard to the fact that the legislature has laid down that the employee may send one copy of the resignation by registered post to the management. The mode of service may, in a conceivable case, have a bearing on the question as to whether the resignation is truly voluntary. In cases where the employee seeks to dispute the voluntary nature of the resignation, each case must be decided on the basis of all the facts and circumstances before the Tribunal and it would be stretching the provisions of section 7 too far to hold that the mere fact that the resignation was not sent by registered post is sufficient to invalidate it."

5. The same view was taken in a subsequent decision in **Anandilal Ganesh Podar Society vs. Mrs.V. Chakravarti**, 2005(1) Mh.L.J.480. The Court also dealt with the provisions of Rule 40 under which a notice of three calendar months is required to be furnished by a permanent employee. Sub-rule (1) of Rule 40 provides that the management may allow an employee to leave service earlier on payment of pay in lieu of notice. If the management does not insist upon the payment in lieu of notice, the consequence is that a proportionate amount of pay in lieu of notice shall be deducted from the grant due to the school concerned. This Court held that the furnishing of three months' notice is intended to enable the authorities of the school to make alternate arrangements occasioned upon the resignation of the employee so that the course of education in the school is not disturbed. If the management allows an employee to resign from service without the stipulated period of notice or pay in lieu thereof, the management would lose to a proportionate extent a deduction from the grant which is receivable for the school. The School Tribunal has not had the benefit of considering the evidence on record in the light of the legal

position which has been laid down in the aforesaid judgments of this Court. In my view, having regard to all these facts and circumstances of the case, it would be appropriate, if the matter is remitted back to the School Tribunal for fresh consideration of the evidence on record, having regard to the legal position as laid down by the Court.

6. In the circumstances, the impugned order of the School Tribunal dated 31st August 2004 is quashed and set aside. The proceeding is restored to the file of the School Tribunal at Nasik. Parties shall appear before the School Tribunal for directions on 6th June 2005. The School Tribunal shall pass a fresh order after furnishing to the parties an opportunity of being heard. The Tribunal shall dispose of the appeal within a period of three months.

7. The petition is accordingly disposed of in the above terms.

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